

## **REMARKS**

In response to the Office Action mailed on May 17, 2010, the Assignee respectfully requests reconsideration based on the above amendments and the following remarks.

Claims 1-4, 6, 9-11 and 14-25 are pending in the present application. Claims 1, 2, 6, 9, 10, 15-17, and 20, 21, 24, and 25 have been amended, leaving claims 1-4, 6, 9-11, and 14-25 for consideration upon entry of the present amendment. No new matter has been added.

### **Support for Claim Amendments**

The amendments to claims 1, 2, 6, 9, 10, 15-17, 20, 21, 24, and 25 are fully supported in Assignee's specification, drawings, and claims as originally filed.

In particular, support for the amendments to independent claims 1, 15, 16, 17, 20, 21, and 24 may be found at least, e.g., in paragraph [0023].

In addition, independent claims 20, 21, and 24 have been amended to address the rejections thereof under 35 U.S.C. §101. Support for the amendments to claims 20, 21, and 24 may be found, e.g., in paragraph [0029].

Dependent claims 2 and 25 have been amended to correct antecedent basis resulting from the amendments to independent claims 1 and 24, from which claims 2 and 25 depend.

Support for the amendment to dependent claim 6 may be found at least, e.g., in paragraph [0027], and support for the amendment to dependent claim 9 may be found at least, e.g., in paragraph [0023].

Claim 10 has been amended to include features previously recited in claim 9 prior to this amendment.

Thus, no new matter has been entered by these amendments.

### **Claim Rejections Under 35 U.S.C. §101**

Claims 21-25 have been rejected under 35 U.S.C. §101 as being allegedly directed to non-statutory subject matter. Claims 21-25 recite computer program product claims. The Assignee notes that claim 20 also recites a computer program product claim, which has not been rejected by the Examiner under 35 U.S.C. §101. In order to expedite prosecution, the Assignee assumes that the Examiner intended to reject claim 20 under 35 U.S.C. §101 and has addressed this rejection as including claim 20.

The Examiner rejects claims 20-25 as including non-transitory embodiments of media, as well as transitory embodiments, such as carrier waves encoded with software steps. The Examiner states that amending these claims to include a computer readable storage medium as a non-transitory storage medium would be sufficient to overcome the rejections. The Assignee has amended independent claims 20, 21, and 24 accordingly and submit that claims 20, 21, and 24, as well as their corresponding dependent claims 22, 23, and 25 recite proper statutory subject matter pursuant to 35 U.S.C. §101. Reconsideration and withdrawal of the outstanding rejections is respectfully requested.

#### **Claim Rejections 35 U.S.C. § 103**

Claims 1, 3, 6, and 9-11 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 7,113,479 to Wong et al. (hereinafter “Wong”) in view of U.S. Patent No. 6,594,265 to Etorre et al. (hereinafter “Etorre”). The Assignee respectfully traverses the rejection of claims 1, 3, 6, and 9-11.

Claims 2, 4, and 14-25 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 7,113,479 to Wong et al. (hereinafter “Wong”) in view of U.S. Patent No. 6,594,265 to Etorre et al. (hereinafter “Etorre”) as applied to Claim 1 above, and further in view of U.S. Publication No. 2004/0215806 to Brenner, et al (hereinafter “Brenner”). Assignee respectfully traverses the rejection of claims 2, 4, and 14-25.

Independent claim 1 has been amended to recite, *inter alia*, “receiving at a service provider system turbo boost triggering criteria, ***at least one of the turbo boost triggering criteria defined by a user of the network turbo boost service***, the turbo boost triggering

criteria received via a user interface provided by the network turbo boost service.” These features are not taught nor rendered obvious in view of the cited references, alone or in combination.

Wong discloses an ISP that implements rate control for traffic over a network, utilizing a switch 304 that may “either rate control the data or terminate rate control for the delivery of the HDTV movie,” (column 5, lines 43-54). Other rate control options are disclosed in column 5, lines 42-62; however, each of these options is implemented by the ISP on behalf of a subscriber. There is no disclosure anywhere in Wong that even remotely suggests triggering criteria defined by a user (subscriber). In addition, there is no disclosure of a user interface by which the user defines triggering criteria. Etorre fails to cure the aforementioned deficiencies of Wong. Brenner has been cited by the Examiner with respect to claims 2, 4, and 14-20. Brenner discloses user preferences that may be pre-configured settings (paragraph [0020]) but fails to teach or suggest triggering criteria defined by a user, as recited above in claim 1. For at least these reasons, claim 1 is patentable over the cited references, both alone and in combination. Reconsideration and withdrawal of the outstanding rejection is respectfully requested.

Claims 2-4, 6, and 9-11 are believed to be patentable over the cited references for at least the reason they depend from an allowable base claim 1. In addition, claims 6 and 10 are believed to be patentable in and of themselves.

Claim 6 has been amended to recite, *inter alia*, “wherein a portion of the turbo boost triggering criteria is defined by the service provider system, the portion of the turbo boost triggering criteria defined by the service provider system is stored in a default preference list, wherein at least one of the turbo boost triggering criteria in the default preference list is modifiable by the user, and at least one of the turbo boost triggering criteria in the default preference list is not modifiable by the user.” These features are not disclosed in any of the cited references. Wong discloses rate control options implemented by an ISP. Etorre discloses an ATM network providing available bit rate adjustment according to an adjusted bandwidth of a virtual path connection. Brenner discloses ISP-implemented bandwidth monitoring and bandwidth adjustments to users, but fails to disclose a default preference list

of triggering options that is in part defined by a service provider and in part defined by a user. For at least this reason, claim 6 is patentable over the cited references, alone and in combination.

Claim 10 has been amended to recite, *inter alia*, “wherein the user is one of user client software, and an application program.” As indicated above with respect to claim 1, a user defines at least one of the triggering criteria. As recited in claim 10, the user is one of user client software, and an application program. Nowhere in Wong, Ettore, or Brenner is it disclosed that either user client software or an application program defines the triggering criteria. For at least this reason, claim 10 is patentable over the cited references, alone and in combination.

Independent claim 15 has been amended to recite, *inter alia*, “receiving at a service provider system turbo boost triggering criteria, ***at least one of the turbo boost triggering criteria defined by a user of the network turbo boost service***, the turbo boost triggering criteria received via a user interface provided by the network turbo boost service.” As indicated above with respect to claim 1, none of the references teach, suggest or render obvious triggering criteria defined by a user. For at least this reason, independent claim 15 is patentable over the cited references, both alone and in combination.

Claim 14 is believed to be patentable over the cited references for at least the reason it depends from an allowable base claim 15.

Independent claim 16 has been amended to recite, *inter alia*, “receiving at a service provider system turbo boost automatic triggering criteria and turbo boost offer triggering criteria, at least one of the turbo boost automatic triggering criteria and ***at least one of the turbo boost offer triggering criteria defined by a user of the network turbo boost service***, the turbo boost automatic triggering criteria and the turbo boost offer triggering criteria received via a user interface provided by the network turbo boost service.” As indicated above with respect to claim 1, none of the references teach, suggest or render obvious triggering criteria defined by a user. For at least this reason, independent claim 16 is patentable over the cited references, both alone and in combination.

Independent claim 17 has been amended to recite, *inter alia*, “a trigger profile system for receiving turbo boost triggering criteria, ***at least one of the turbo boost triggering criteria defined by a user of the network turbo boost service***, the turbo boost triggering criteria received via a user interface provided by the network turbo boost service.” As indicated above with respect to claim 1, none of the references teach, suggest or render obvious triggering criteria defined by a user. For at least this reason, independent claim 17 is patentable over the cited references, both alone and in combination.

Claims 18 and 19 are believed to be patentable over the cited references at least for the reason they depend from what should be an allowable base claim 17.

Independent claim 20 has been amended to recite, *inter alia*, “receiving turbo boost triggering criteria, ***at least one of the turbo boost triggering criteria defined by a user of the network turbo boost service***, the turbo boost triggering criteria received via a user interface provided by the network turbo boost service.” As indicated above with respect to claim 1, none of the references teach, suggest or render obvious triggering criteria defined by a user. For at least this reason, independent claim 20 is patentable over the cited references, both alone and in combination.

Independent claim 21 has been amended to recite, *inter alia*, “receiving a set of at least one available network turbo boost triggering options, where the set of at least one available network turbo boost triggering options includes destination addresses for which high speed transfer on a network will be recommended, and one of being notified when a large incoming file is detected, being notified when a large outgoing file is detected, being notified when a destination address is on a list of high transmission rate applications, and being notified when a request is received from an application that typically requires downloading of application code data, where the application that typically requires downloading of application code data includes service packs, and software updates, where the list of high transmission rate applications includes video conferencing sites and gaming sites, and where the destination addresses include a gaming application address and a video conferencing address;

*...wherein at least one of the network turbo boost triggering options is defined by the user."* As indicated above with respect to claim 1, none of the references teach, suggest or render obvious triggering criteria defined by a user. For at least this reason, independent claim 21 is patentable over the cited references, both alone and in combination.

Claims 22 and 23 are believed to be patentable over the cited references at least for the reason they depend from what should be an allowable base claim 21.

Independent claim 24 has been amended to recite, *inter alia*, "receiving a set of at least one available network turbo boost triggering options, where the set of at least one available network turbo boost triggering options includes destination addresses for which high speed transfer on a network will be recommended, and one of being notified when a large incoming file is detected, being notified when a large outgoing file is detected, being notified when a destination address is on a list of high transmission rate applications, and being notified when a request is received from an application that typically requires downloading of application code data, where the application that typically requires downloading of application code data includes service packs, and software updates, where the list of high transmission rate applications includes video conferencing sites and gaming sites, and where the destination addresses include a gaming application address and a video conferencing address;

*...wherein at least one of the network turbo boost triggering options is defined by a user."* As indicated above with respect to claim 1, none of the references teach, suggest or render obvious triggering criteria defined by a user. For at least this reason, independent claim 24 is patentable over the cited references, both alone and in combination.

Claim 25 is believed to be patentable over the cited references at least for the reason it depends from what should be an allowable base claim 24.

**CONCLUSION**

It is believed that the foregoing amendments and remarks are fully responsive to the Office Action and that the claims herein are in condition for allowance. In the event the Examiner has any questions regarding the instantly submitted response, the undersigned respectfully request the courtesy of a telephone conference to discuss any matters in need of attention.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully Submitted,

CANTOR COLBURN LLP

By /Marisa J. Dubuc/

Marisa J. Dubuc

Registration No. 46,673  
20 Church Street, 22<sup>nd</sup> Floor  
Hartford, CT 06103-3207  
Telephone: (860) 286-2929  
Facsimile: (860) 286-0115  
Customer No. 36192

Date: September 7, 2010